

St. Louis City Ordinance 63330

FLOOR SUBSTITUTE

BOARD BILL NO. [94] 292

INTRODUCED BY ALDERMAN GERALDINE OSBORN

An Ordinance recommended by the Airport Commission and the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis to enter into and execute on behalf of the City of St. Louis, a First Southwest Airlines Co. Amendatory Agreement for East Terminal Expansion which is attached hereto as Exhibit "A" and incorporated herein; and containing an emergency clause.

WHEREAS, Southwest Airlines plans to move from their current location (East Terminal) to the East Terminal Expansion on or about December 1, 1996; and

WHEREAS, it is necessary to amend Airport Use Agreement No. AL-4 with Southwest Airlines to reflect the changes to the terms and conditions relating to the above; and

WHEREAS, this Amendatory Agreement provides Southwest Airlines with preferential use of twelve (12) gates and associated operations areas in the East Terminal Expansion; and

WHEREAS, this Amendatory Agreement established a method to calculate terminal rental rates, upon the completion of the facilities;

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Director of Airports and the Comptroller of the City are hereby authorized and directed to execute on behalf of the City a First Southwest Airlines Amendatory Agreement for East Terminal Expansion, which is attached hereto as Exhibit "A" and incorporated herein.

SECTION TWO. This being an Ordinance necessary for the immediate presentation of the public safety and welfare, it is hereby directed to be an emergency measure within the meaning of Article IV, Sections 19 and 20 of the City Charter and shall become effective immediately upon approval of the Mayor.

EXHIBIT "A"

FIRST SOUTHWEST AIRLINES CO. AMENDATORY AGREEMENT FOR EAST
TERMINAL EXPANSION LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT

THIS AGREEMENT, made and entered into this day of , 1994, by and between the City of St. Louis, a municipal corporation of the State of Missouri, (the "City") and Southwest Airlines Co., a corporation organized and existing under and by virtue of the laws of the State of Texas, (the "Airline").

WITNESSETH:

WHEREAS, the City owns an airport located in the County of St. Louis, State of Missouri, known as the Lambert-St. Louis International Airport, (the "Airport"), which facility is utilized by certain scheduled airlines engaged in the business of transporting persons, property and mail by air, including Airline, which is in possession of certain premises and facilities on Airport, together with certain rights, licenses and privileges, by that certain Airport Use Agreement dated December 20, 1989, (the "Airport Use Agreement"); and

WHEREAS, City and Airline have reached agreement on the need, design, construction and financing of a Terminal and Concourse Project (the "East Terminal Expansion") as more specifically delineated hereinafter; and

WHEREAS, City and Airline have determined that expansion of the East Terminal and other items related to the East Terminal such as parking, access roads, fuel delivery systems, and other related auxiliary facilities is necessary; and

WHEREAS, City and Airline entered into an Architectural and Engineering Agreement dated June 24, 1991, as amended, concerning the preparation of Design Development and Construction Drawings for said East Terminal Expansion to eight (8) gates and related facilities; and

WHEREAS, Airline requested and City approved an increase to the East Terminal Expansion from eight (8) gates and related facilities to ten (10) gates and related facilities dated June 15, 1993; and

WHEREAS, Airline requested and City approved an increase to the East Terminal Expansion from ten (10) gates and related facilities to twelve (12) gates and related facilities dated May 9, 1994; and

WHEREAS, City and Airline desire to enter into this First Southwest Airlines Co. Amendatory Agreement (the "First Amendment"), amending the terms and conditions of Airline's lease and use of Airport facilities pursuant to said Airport Use Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and considerations herein contained, it is agreed by and between City and Airline as follows:

SECTION I

CONSTRUCTION OF THE EAST TERMINAL EXPANSION

A. City shall construct the East Terminal Expansion substantially in accordance with the preliminary drawings attached hereto as Exhibit "A" and the Building Design and Finish Standards attached hereto as Exhibit "B", both of which are incorporated herein. City shall cause final plans and specifications to be prepared in accordance with said preliminary drawings and standards, which such final plans and specifications shall be reviewed by Airline and remain on file in the office of the Director of Airports and are hereby incorporated by reference herein.

B. In order to construct the East Terminal Expansion, City, as part of the total construction program, shall also construct and complete other associated and required facility improvements, alterations and additions as designated in Exhibit "C", attached hereto and incorporated herein.

C. City recognizes the need to develop and have operational additional domestic scheduled passenger terminal facilities at Airport as soon as practical and Airline has made a commitment to use such additional facilities. Therefore, City shall begin, as soon as practical, offering phased construction document packages for bidding, with all packages in the aggregate comprising the total construction program, as delineated on Exhibit "C", for the East Terminal Expansion and the associated and required facility improvements, alterations and additions. City shall make every reasonable effort to have operational for public use by Airline on or about December 1, 1996, or as soon thereafter as practical, at least eight (8) of the twelve (12) new aircraft frontal gates in the East Terminal Expansion. Construction phasing and scheduling is illustrated on Exhibit "D" attached hereto and incorporated herein.

SECTION II

LEASE AND USE OF THE EAST TERMINAL EXPANSION

A. Upon completion of the East Terminal Expansion, or any portion thereof, City shall lease to Airline for its preferential use and Airline shall lease from

City the areas in the East Terminal Expansion (or appropriate portions thereof which may be completed from time to time) as delineated on Exhibit "E". To that end, Airline and City recognize that the dimensions of the areas as delineated on Exhibit "E" are approximate only and, therefore, as soon as practical following substantial completion of the East Terminal Expansion, the City shall take field measurements to determine the precise areas constructed and to be leased on a preferential use basis by Airline. Airline's preferential use areas shall be measured from the center of interior walls and from the inside of exterior walls.

SECTION III RENTALS

A. Airline, shall, beginning upon the date of beneficial occupancy by it of any preferential use leased area of the East Terminal Expansion (the "Premises"), pay rentals prorated for each such area. Said Rentals shall be in amounts as calculated in accordance with the provisions of this Section III, B. below and due and payable as provided in the Airline Use Agreement. Airline shall be deemed to take beneficial occupancy of any part of the Premises no later than thirty (30) days after the date the Director of Airports certifies in writing to Airline that such area shall be so substantially completed as to be operational for public use by Airline without hazard or undue inconvenience. Rentals are subject to revision on January 1 of each year during the term of and as provided in the Airport Use Agreement and in accordance with the provisions set forth below.

B. The rental amount for each square foot of space occupied by Airline under this First Amendment shall be determined as follows.

In compliance with Federal Aviation Regulations, 14 CFR Part 158, effective June 28, 1991, Appendix A - Assurances, B. (8) (c) Rates, Fees and Charges (the "Regulations"), City shall determine a comparable rate per square foot for recent construction using bond financing. For consistency in the development of comparable rental rates for the East Terminal Expansion facilities the same formulae will be used as were used for similar terminal projects completed for other signatory air carriers at the Airport. The method of calculating rental rates is to be similar to that set out in Section III (B) of the Trans World Airlines, Inc., Third Amendatory Agreement for Concourse Improvements dated July 23, 1981, as modified by the requirements of the Regulations which the parties agree, when applied to the Premises, is to be as follows:

(a) Three similar facilities, set out in Schedule A to this First Amendment, are to be used as a basis for the development of comparable rates for the East

Terminal Expansion Terminal. Using the formulae from the Trans World Airlines, Inc., Third Amendatory Agreement for Concourse Improvements dated July 23, 1981, and Ozark Airlines, Inc., Fourth Amendatory Agreement for Concourse Addition and Improvements dated September 26, 1983, a combined rate was developed as shown in Schedule A.

(b) Using the annual rate for the combined similar facilities, adjusted rates were developed to reflect current construction costs and the City's most recent revenue bond rates. Schedule B to this First Amendment uses an annual inflation rate of 3.0% and the interest rate of the City's Series 1993A Airport Revenue Bonds issued December 1993, of 6.33%.

(c) To assure that the inflation rate used in Schedule "B" was reasonable to use in determining a comparable rental rate, a calculation was made using the Airport's construction consulting engineers' latest estimate of the cost of the East Terminal Expansion Terminal as shown in Schedule C to this First Amendment.

(d) Applying the information developed in Schedules A, B and C the rental calculation shown in Schedule D to this First Amendment would be \$30.14 per square foot.

SECTION IV

CITY CONTRACTED AIRLINE TENANT IMPROVEMENTS

A. Airline requested and City agrees to construct certain Contracted Airline Tenant Improvements, up to a maximum amount of \$3,000,000.00, as more specifically delineated in Exhibit "F" attached hereto and incorporated herein. Airline agrees to reimburse City for the cost of such Contracted Airline Tenant Improvements. The Airline shall reimburse the City within 30 days of issuance by the City of its invoice for costs the City has incurred for Contracted Airline Tenant Improvements. Airline agrees to provide the City, at Airline's expense, a Letter of Credit in favor of the City in the amount of \$3,000,000.00. This Letter of Credit must be received one month before the City incurs any costs for the Contracted Airline Tenant Improvements. This Letter of Credit may be drawn upon by the Director of Airports for the collection of any reimbursable amount, if such amount is not received by the City within 30 days of the date invoiced.

B. Airline shall be responsible for the operation, maintenance, repair and replacement of all Contracted Airline Tenant Improvements, the same as if the Airline had contracted the tenant improvements with its own funds.

C. City, by its Director of Airports, shall transfer title to Airline of all Contracted Airline Tenant Improvements and assign to Airline all warranties and guaranties which may be applicable and normally available with respect to certain of the Contracted Airline Tenant Improvements upon completion of the East Terminal Expansion. To that end, City shall include in its bid packages, and associated contract documents with respect to such specific Contracted Airline Tenant Improvements, appropriate provisions for notifying the particular contractor or supplier of the foregoing transfer and assignment and otherwise to ensure the enforceability of same by Airline.

SECTION V

DEFINITION OF TERMS

Airline agrees that the following terms, as used in the Airport Use Agreement and this First Amendment (collectively the "Agreements"), shall be defined as set out below;

Whenever the term "Federal Aviation Administration" is used in the Agreements, it should be construed as referring to the Federal Aviation Administration created by the Federal Government, under the Federal Aviation Act of 1958, or to such other Federal Government authority as may be the successor thereto or be vested with the same or similar authority.

Whenever the term "Director of Airports" is used in the Agreements, it shall be construed as meaning the person appointed to and discharging the duties of the administrative officer of the Airport.

Whenever the terms "person" and "persons" are used in the Agreements, they shall be construed as including individuals, firms, corporations and other legal entities.

"Maximum approved landing weight" as set forth in Section 306, Paragraph A of the Airport Use Agreement, refers to maximum aircraft landing weight as defined by the Federal Aviation Administration Standards.

The term "enplaned passengers" as used in the Airport Use Agreement, shall include originating and interline connecting passengers.

The term "Contracted Airline Tenant Improvements" as used in the First Amendment, refers to those Airline facility improvements which the City included in the total construction program, the cost of which are the sole responsibility of Airline.

SECTION VI
EFFECT ON AIRPORT USE AGREEMENT

Except as herein expressly amended, the Airport Use Agreement dated December 20, 1989, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this First Amendment the day and year first above written.

Pursuant to Ordinance , approved .

CITY OF ST. LOUIS

The foregoing First Amendment was approved by the Airport Commission at its meeting on the day of , 1994.

Commission Chairman Date
and Director of Airports

APPROVED AS TO FORM ONLY

City of St. Louis

Register, Date
City of St. Louis

COUNTERSIGNED

City Counselor Date
Comptroller, Date
City of St. Louis

The foregoing First Amendment was approved in substance by the Board of Estimate and Apportionment at its meeting on the day of , 1994.

SOUTHWEST AIRLINES CO.

Title:
Date:

Secretary, Date
Board of Estimate & Apportionment

| Legislative History | | | | |
|---------------------|----------------|-----------|-------------|---------------|
| 1ST READING | REF TO COMM | COMMITTEE | COMM SUB | COMM AMEND |
| 11/28/94 | 11/28/94 | T&C | | |
| 2ND READING | FLOOR AMEND | FLOOR SUB | PERFECTN | PASSAGE |
| 12/02/94 | | | 12/09/94 | 12/09/94 |
| ORDINANCE | VETOED | | VETO OVR | |
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